

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0410
Sales and Withholding Tax
Responsible Officer
For the Tax Period 1993-1994**

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ISSUE

1. Sales and Withholding Tax-Responsible Officer Liability

Authority: IC § 6-8.1-5-1(b), IC § 6-3-4-8(g), IC § 6-2.5-9-3.

The taxpayer protests the responsible officer liability for unpaid corporate sales and withholding taxes.

STATEMENT OF FACTS

The Taxpayer was an officer of a corporation that operated a lumber yard. The corporation failed to pay its sales and withholding taxes during the tax period December 1993 through September 1994. The Indiana Department of Revenue (Department) assessed the unpaid sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The Taxpayer protested the assessment of tax and a hearing was held.

1. Sales and Withholding Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes were imposed correctly. IC § 6-8-1-5-1(b). The Taxpayer has the burden of proving that the assessment is incorrect.

The proposed withholding taxes were assessed against the Taxpayer pursuant to IC § 6-3-4-8(g), which provides in relevant part that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The proposed sales tax liability was issued under authority of IC § 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The Taxpayer argued that his tenure as an officer of the corporation ended on September 30, 1993. As such he would not have been a person responsible for the filing of the sales and withholding tax forms or remitting the sales and withholding taxes to the state during the tax period. The Taxpayer did not, however, submit any documentation to prove his assertion.

The Taxpayer failed to sustain his burden of proving that he was not a person responsible for remittance of sales and withholding taxes to the state. The Department properly imposed the corporate sales and withholding taxes.

Finding

The Taxpayer's protest is respectfully denied.

KMA/BK/DK-February 1 , 2007